AMERICAN CIVIL LIBERTIES UNION

WASHINGTON NATIONAL OFFICE
Laura W. Murphy
Director

1333 H Street, NW Washington, D.C. 20005 (202) 544-1681 Fax (202) 546-0738

October 3, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex parte* communcation in: CS Docket No. 02-52

Dear Ms. Dortch:

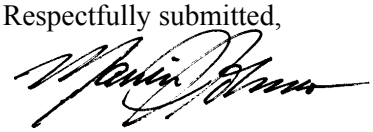
On October 2, 2002, Barry Steinhardt, Director of the Technology and Liberty Project for the ACLU, Jeffrey Chester, Executive Director for the Center for Media Education, Andrew Afflerbach, Vice President of Columbia Telecommunications Corporation, and Marvin Johnson, Legislative Counsel for ACLU, met with Ken Ferree, Chief, Media Bureau (MB), Kyle Dixon, Deputy Bureau Chief, MB, Mary Beth Murphy, Chief of the Policy Division, MB, Marjorie Reed Greene, Associate Bureau Chief, MB, and John B. Norton, Deputy Chief, Policy Division, MB.

The purpose of the meeting was to discuss the report entitled "Technological Analysis of Open Access and Cable Television Systems," dated December 2001, and the white paper entitled "No Competition: How Monopoly Control of the Broadband Internet Threatens Free Speech," both of which were filed by the ACLU on or about July 15, 2002 in the above-captioned proceedings.

ACLU provided copies of the white paper and the report to staff. A copy of the Powerpoint presentation used during the meeting is attached.

In accordance with Section 1.1206(b), 47 C.F.R. §1.1206, this letter is being filed electronically with your office today.

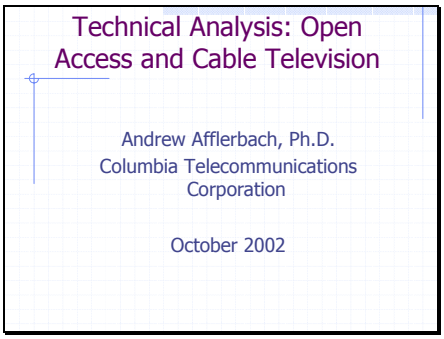
Respectfully submitted,



Marvin J. Johnson
Legislative Counsel, ACLU

Cc: Ken Ferree
Kyle Dixon
Marjorie Reed Greene
Mary Beth Murphy
John B. Norton

Slide 1



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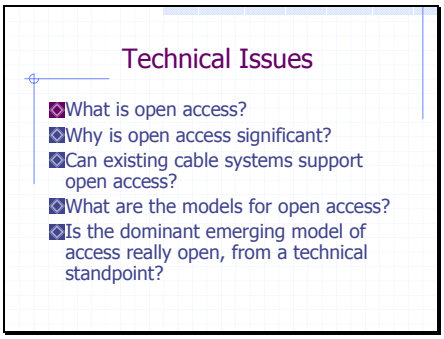

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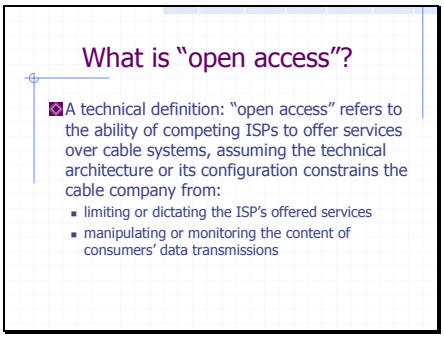

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Why is open access significant?

- Open access is the technical means of precluding these and other cable co. practices:
  - Slowing or blocking transmission of disfavored sites
  - Monitoring or recording customer Internet use, including the content of sites visited and e-mail correspondence
  - Limiting certain types of Internet use, such as voice, peer-to-peer services, etc.

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What are the models for access?

- Closed models
  - The single-ISP "closed" standard
  - Rebranding and resale of wholesale services
- Potentially open models
  - Separate channels
  - Policy-based routing

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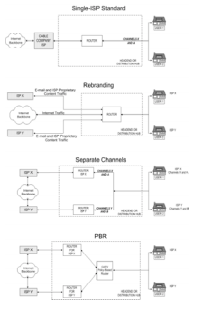

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Models for access: the single-ISP closed standard

- Currently, the dominant model
- Offers one ISP, usually owned by or affiliated with the cable company
- Generally utilizes "destination-based routing," sending Internet traffic and e-mail based on its destination address
- Enables the cable operator ISP to manipulate and monitor data transmissions
- AT&T Portland model

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Models for access: rebranding

- The dominant emerging model of access
- Resale by competing ISPs of the Internet product provided by the cable co. (only e-mail, chat rooms, and other proprietary services are differentiated)
- Generally, when cable companies announce they have implemented "open" access, they are referring to rebranding
- Tacoma Click! model

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Rebranding is not technically "open" access

- May offer price competition but does not offer differentiated Internet services or constrain cable company practices
- Cable co. controls the Internet connection and routing and can therefore:
  - Limit and dictate the services provided by the competing ISPs for any reason, including non-technical reasons
  - Manipulate and monitor the Internet use of other ISPs' consumers, as it can its own customers

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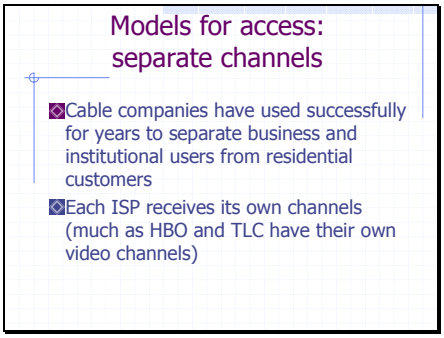

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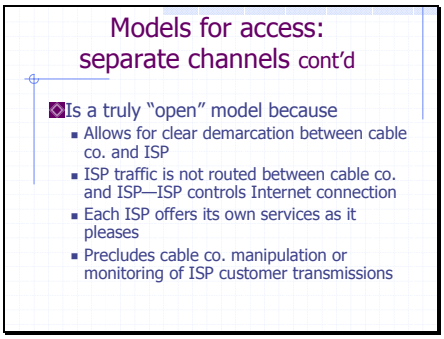

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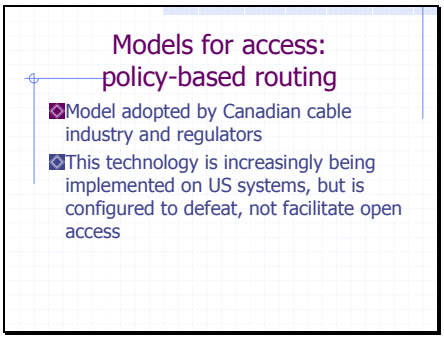

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Models for access: policy-based routing cont'd

- Utilizes a routing scheme that sends Internet traffic and e-mail based on a customer's source address or other "policy"
- Depending on configuration, enables cable company to:
  - manipulate and monitor data transmissions
  - limit and dictate the services provided by the competing ISPs for any reason, including non-technical reasons

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Models for access: policy-based routing cont'd

- Provided the rights of the competing ISP and its customers are protected, PBR can be configured to provide open access
  - Can allow competing ISP to control routing and the ISP connection to the Internet backbone
  - Can allow competing ISP to provide wide range of competing services, including voice and video-on-demand
- Enables more ISPs to provide services in a cable system than "separate channel" model

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Can existing cable systems support open access?

- The majority of existing systems are Hybrid Fiber/Coaxial (HFC)
- HFC systems are capable of supporting any of the four models discussed above, two of which are capable of being truly "open" from a technical standpoint:
  - Separate channels (precedent: business, institutional users)
  - Policy-based routing (precedent: Canadian cable)